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EXAMINER	
COULTER, K	

ART UNIT	PAPER NUMBER
2758	3

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____3_____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) *17-33* _____ is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *17-33* _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- *SEE OFFICE ACTION ON THE FOLLOWING PAGES* ---

DETAILED ACTION

Claim Objections

1.   Claims 20 are objected to because of the following informalities:

"Claim **25**" (claim 20, line 1) is out of sequence and seems to be incorrect.

Appropriate correction is required.

Double Patenting

2.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

      A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

      Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3.   Claims 17 - 33 are rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claims 1 - 27 of U.S. Patent No. 6,076,109.

Although the conflicting claims are not identical, they are not patentably distinct from each other

because the claim language of the present Application and claims 1 - 27 in U.S. Pat. No.

6,076,109 contain the same information.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 17 - 19, 21- 25, 27 - 31 and 33 are rejected under 35 U.S.C. 103(a) as being

unpatentable over <u>Kalra et al.</u> (U.S. Pat. No. 5,953,506) (Method and Apparatus that Provides a

Scalable media Delivery System)

5.1   Regarding claim 17, <u>Kalra</u> discloses a computing system comprising:

        a client (Abstract; Fig. 2A); and

        a server having server control routines and connected to the client by a data link

(Abstract; Fig. 2A;);

        wherein the server control routines, upon a request to download by a client, determine

one or both of hardware or software characteristics of the client, transpose data, without further

negotiation with the client, and transmit the transposed data to the client in a form specifically

adapted to the characteristics of the client, and wherein, in the transposing, a first set of streams

is transposed into a second set of streams fewer in number than the first set of streams (Abstract;

Fig. 2A, 2B; col. 4, lines 14 - 32 and 47 - 59).

However, Kalra does not explicitly disclose a "*set of files*" but rather a group of **streams**.

It would have been obvious to one of ordinary skill in the art at the time of the invention to

implement a "set of files" in Kalra because Kalra discloses an art recognized equivalent **streams**.

5.2   Per claim 18, Kalra teaches that the second set of streams comprises a single file (Fig.

2A, item 14Ab).

5.3   Regarding claim 19, Kalra discloses that the number of streams in the second set of files

is a function of the characteristics of the client (Abstract; Fig. 2A; col. 4, lines 14 - 31).

5.4   Per claim 21, Kalra discloses that the server transposes HTML streams (Figs. 13, 14; col.

15, lines 10 - 32).

5.5   Regarding claim 22, Kalra discloses that upon log-in at the server, the client transfers to

the server information particular to the hardware or software characteristics of the client, and

wherein the server incorporates the information in transposing data for transfer to the client
(Abstract; Fig. 2A; col. 4, lines 14 - 31).

5.6   Per claims 23 - 25, 27 - 31 and 33, the rejection of claims 17 - 19, 21, and 22 applies
fully.

6.   Claims 20, 26, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Kalra as applied to claim 17, 23 and 29 above, and further in view of Parsons, Jr. et al. (U.S. Pat.
No. 6,085,247) (Server Operating System for Supporting Multiple Client-Server Sessions and
Dynamic Reconnection of Users to Previous Sessions Using Different Computers).

6.1   Per claim 20, 26, and 32, Parsons teaches that the server, after transposing the data, saves
a copy of the transposed data for future communication with the same client or a client having
the same or similar characteristics (Abstract; Fig. 5; col. 7, line 50 - col. 8, line 36).
It would have been obvious to one of ordinary skill in the art at the time of the invention to
combine the specifics of Parsons with Kalra because Kalra already saves the adaptive digital
streams (14) (Fig. 2A, item 14) and emphasizes efficiency with the conservation of bandwidth
between client and server. Therefore, regenerating the adaptive digital streams for future client
downloads would be inefficient and wasteful of processing power, which contradicts the purpose
of Kalra.

7.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kenneth Coulter whose telephone number is (703) 305-8447.

KENNETH R. COULTER
PRIMARY EXAMINER

krc

September 30, 2000